

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

SONNY FORBES)
)
v.) NO. 2:05-CV-28
)
BROADSPIRE SERVICES, INC.)

MEMORANDUM OPINION

This is an action for long-term disability benefits under the Employee Retirement Income Security Act of 1974 [ERISA], 29 U.S.C. § 1001 *et seq.*, brought by Sonny Forbes, a former employee of Air Products, Inc. [Air], against Broadspire Services, Inc. [Broadspire], which has been identified as the plan administrator. The action is now before this court on cross-motions for a judgment on the basis of the Administrative Record [AR]. In addition, Broadspire has filed a motion to dismiss the case. [Doc. 7].

This court is not required to reach the merits of the cross-motions for judgment based on the AR because it grants Broadspire's motion to dismiss the case for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

In May 2003, Mr. Forbes's complaint against Air, Air Gas, Inc., and Kemper Administrative Services, Inc. [Kemper], was removed from the Chancery Court for

Sullivan County, Tennessee, to this court. The complaint alleged that Kemper was the administrator of the disability plan offered by Air, and said disability plan was governed under ERISA. Mr. Forbes sought short-term and long-term disability benefits for the period of January 2002 through the date he filed the complaint. [Doc. 1, Case No. 2:03-CV-165].

On July 14, 2004, this court entered a stipulated order of dismissal which found that “all matters in controversy as among them [Sonny A. Forbes, Air, Air Gas, Inc., and Kemper] have been compromised and settled and that the action of the Plaintiff, Sonny A. Forbes, should be dismissed with full prejudice.” [Doc. 28].

Broadspire claims in its motion to dismiss that Mr. Forbes has failed to state a claim under Rule 12 because Mr. Forbes’ 2005 complaint against plan administrator Broadspire seeks the exact same short-term and long-term benefits that were the subject of the 2003 complaint that was dismissed with prejudice. The sole difference, according to Broadspire, is that the name of the defendants changed. And, this difference is stated to be insignificant since Broadspire is simply the successor to Kemper, the named plan administrator in the 2003 complaint.

This court agrees that Mr. Forbes’ 2005 complaint seeks to reopen the same matters of controversy as the 2003 complaint, namely whether he was entitled to both short-term and long-term disability from Broadspire, the successor to Kemper. Based on this court’s July 2004 dismissal of the case, however, this issue has already been

resolved. The 2003 lawsuit was dismissed with prejudice, and Mr. Forbes is not allowed another bite at the proverbial apple.

After careful consideration of the entire record of proceedings related to this case, this court grants Broadspires's motion to dismiss. Accordingly, this court also finds to be moot Mr. Forbes' motion for summary judgment and Broadspire's motion for summary judgment. Both motions for summary judgment are denied, and this action will be dismissed.

An appropriate order will follow.

ENTER:

s/Thomas Gray Hull
THOMAS GRAY HULL
SENIOR U. S. DISTRICT JUDGE